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Supreme Court, U.S.
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No. 02-622

In The
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2002

NORA Z. RAMOS,

Petitioner,

- against -

GEORGE L. COBB, Hon., as Justice of the Supreme Court of the State of New York, County of Greene, PATTEN CORP. (or BLUEGREEN CORPORATION, as Successor in Interest to Patten Corporation); and ROBERT W. BIRCH, ESQ.,

Respondents.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Second Circuit

REPLY TO PATTEN/BLUEGREEN'S BRIEF IN OPPOSITION

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December 21, 2002

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QUESTIONS PRESENTED

1. Did the United States Court of Appeals err in affirming the District Court's judgment that dismissed sua sponte the petitioner's claims even before the respondents can answer the complaint, considering that she had presented concrete particulars establishing a prima facie case of discrimination that placed the burden upon the respondents to produce admissible evidence to rebut the presumption of racial discrimination in petitioner's favor?

2. Did the U. S. Court of Appeals err in deciding that the petitioner's federal claims are "inextricably intertwined" with the state court action inasmuch as the two lawsuits have different parties and distinct causes of action and no discrimination issue was presented nor actually and necessarily decided against the respondent Patten/ Bluegreen in the state court, instead, it was the discrimination by Robert W. Birch, the attorney for Patten/Bluegreen, that was raised and ignored by the Judge in the state foreclosure action?

3. Did the United States Court of Appeals abuse its discretion by not specifying in its order that the property being foreclosed at the state court action was a vacant lot, thus evading the ministerial duties imposed upon the respondent Judge by the New York Banking Laws, Article 9, Section 350, paragraph 2, Section 355, par. 1, Article 12-D, sec. 590, par. 1 -(a) & (b), Article 9, sec. 351, par. 5 (b) (i) and Section 352, par. 3?

4. Did Judge Cobb have the ministerial duty to dismiss the complaint in his settled order dated February 9, 1998 vacating the judgment of foreclosure and sale of the petitioner's vacant lot dated October 9, 1997, there being no opposition, pursuant to CPLR 3211 (a) 8, for lack of jurisdiction, CPLR 3211 (a) 7, for failure to state a cause of action, and CPLR 3012 (b) for failure to serve the complaint demanded in the petitioner's motion to vacate said judgment of foreclosure/sale, filed on November 21, 1997?

5. When the respondents Patten/Bluegreen and Birch did not vacate the order of February 9, 1998 pursuant to CPLR 5015 and 2214, did it render void Judge Cobb's judgment of foreclosure and sale signed on April 11, 2000 and his order dated August 29, 2000 denying the petitioner's motions to dismiss the complaint and to vacate said judgment of foreclosure and sale of April 11, 2000?

6. Did the petitioner prove that the respondents have deprived her under color of state law of her rights protected by the Fourteenth Amendment to the United States Constitution?

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I. THE MCDONNELL DOUGLAS (TITLE VII) FRAMEWORK IS FULLY APPLICABLE TO RACIAL-DISCRIMINATION CLAIMS UNDER 42 USCS 1981, THAT COVERS ALL CONTRACTS.

McDonnell Douglas Corp. v. Green, 411 US 792, 802 (1973), have "established an allocation of the burden of production and an order for presentation of proof in ..... discriminatory-treatment cases."

In Patterson v. McLean Credit Union, 491 US 164 (1989), the court applied the framework to claims under 42 USCS 1981. See, St. Mary's Honor Center v. Hicks, 509 US 502, 506, Footnote # 1 (1993).

In Rivers v. Roadway Express (1994), 511 US 298, 128 L Ed 2d 274, 283, the court held that 42 USCS 1981 (hence Section 101 of the Civil Rights Act of 1991 (amending 42 USCS 1981) is not limited to employment, it covers all contracts, e.g., Runyon v. McCrary, 427 US 160 (1976) (admissions to private schools).

Ramos is invoking violation of Section 101 of the Civil Rights of 1991 (amending 42 USCS 1981) in her complaint.

The order and burden of proving intentional discrimination established in McDonnell Douglas was applied to claims under 42 USCS 1981 in Patterson.

Therefore, said framework must be applied to Ramos' discrimination case because 42 USCS 1981 applies to all contracts, not only to employment cases as alleged by respondent Patten/ Bluegreen in their brief in opposition, page 7.

II. "FRIVOLOUS" HAS THE SAME DEFINITION FOR BOTH PAYING AND NON-PAYING LITIGANTS.

It is true that in Neitzke v. Williams, 490 US 319, 327 (1989), Nance v. Kelly, 912 F 2d 605, 606 (2d Cir. 1990) (per curiam), the court defines what is a frivolous or malicious complaint in a forma pauperis case.

It is absurd to even imply that "frivolous" will change its meaning when applied to a paying litigant's case like Ramos' as propounded by Patten/Bluegreen in their brief in opposition, page 8.

III. THE "INEXTRICABLY INTERTWINED" PRINCIPLE DOES NOT APPLY TO THIS CASE.

Ramos has specifically alleged in her complaint, paragraphs 25 and 26, the pattern of discriminatory conduct of Robert W. Birch, Esq. during the foreclosure proceedings. See, Patten/ Bluegreen's Appendix E.

The records in both lawsuits will attest that Patten/Bluegreen's discrimination against Ramos was never presented nor litigated in the state foreclosure proceedings.

Patten/Bluegreen's contention in their brief in opposition, page 9, that the Rooker-Feldman doctrine applies and barred Ramos' federal claims conflicts with the "Inextricably Intertwined" rule.

IV. THE RESPONDENTS DID NOT DENY THAT COBB, J. FAILED TO PERFORM HIS MINISTERIAL DUTIES UNDER THE LAW.

The general public will be benefited if this court will decide whether absolute immunity attaches to the Judge's non-performance of his ministerial duty as distinguished from the non-performance of his discretionary duty.

V. SECTION 101 OF THE CIVIL RIGHTS ACT OF 1991 (AMENDING 42 USCS 1981) APPLIES TO THE PRIVATE ACTS OF DISCRIMINATION BY PATTEN/BLUEGREEN AND BIRCH.

Ramos did not invoke 42 USCS 1983 to apply to Patten/ Bluegreen's and Birch's discrimination because her federal claims did not involve garnishment action nor prejudgment attachment procedure.

VI. RELEASE IS A QUESTION OF LAW ADDRESSED AT THE COURT BELOW.

"Though, we do not normally decide issues not presented below, we are not precluded from doing so, e. g., Youakim v. Miller, 425 U S 231, 234 (1976)." Carlson v. Green, 446 U S 14, 17 (1980), Footnote # 2.

In Glover v. United States, 531 U S 198, 205 (2001), the Court implied that the issue would have been reviewed in the petition for certiorari had it been presented before the United States Court of Appeals.

In Oklahoma City v. Tuttle, 471 U S 808, 816 (1985), the Court granted certiorari to review an issue squarely presented to ..... the Court of Appeals.

In Pollard v. United States, 352 U S 354, 359 (1957), the Court held that

> "we conclude that it is proper that we deal with the questions ..... that petitioner now raises, although, had petitioner been represented by counsel in the courts below and upon his petition for certiorari, we might well have considered those questions neither preserved below nor raised in the petition."

The records at the United States Court of Appeals for the Second Circuit show that Ramos stated that a week before April 15, 2001, she learned from her friend's accountant that Substitute Forms 1098 - Copy B (1996, 1997 and 1998) that she received from Bluegreen, reported to the Internal Revenue Service showing each time the balance of $22,258.16 meant that the outstanding debt is released by the lender. See Notice of Appeal, Form C, filed on August 27, 2001. Docket No. 01-9013.

In Ramos' reply brief in opposition to Cobb, J.'s and Birch's briefs filed on March 12, 2002 (Docket No. 01-9013), she informed the Second Circuit about the said 1996, 1997 and 1998 Substitute Forms 1098 that appeared in her petitions for a hearing to review the sua sponte order of June 6, 2001 dismissing her appeal for lack of jurisdiction, filed on June 25, 2001 and on July 24, 2001, with leave of court (Docket No. 01-7287).

Patten/Bluegreen's contention in their brief in opposition, page 12, that the petitioner's Substitute Forms 1098 and release theory were never

addressed in the courts below and therefore, not subject to this Court's discretionary review, is without merit.

VII. THE COMPLAINT ALLEGES MORE THAN ENOUGH ACTUAL EVENTS TO SATISFY RULE 8 (a) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

Rule 8 (a) only require a short, plain statement of the claim to give the defendant fair notice of the plaintiff's claim and the grounds of the action. Conley v. Gibson, 355 U S 41 (1957).

VIII. RAMOS IS NOT YET REINSTATED AS ATTORNEY.

She applied for reinstatement to the New York Bar on August 31, 2001 after the expiration of her five - year suspension, however, when she inadvertently failed to pay the $250 court fee, the Appellate Division, Second Department, Supreme Court of New York State, denied her application for reinstatement without providing any reason for the denial, in an order entered on February 19, 2002, using her old Index No. 1995-03789.

In her appeal to the New York Court of Appeals, her requests for a hearing and to pay the court fee of $250 were denied on the ground that no substantial constitutional question is directly involved, in an order entered on June 11, 2002. N Y S Court of Appeals, Mo. No. 611 SSD.

She has not pursued the matter because she needs full concentration in this case.

Ramos has a pending pro se civil rights appeals at the United States Court of Appeals for the Second Circuit, Docket Nos. 98-6901 (L) and

99-9084 (Con) (1144) entitled Ramos v. Mangano, et al., for violation of her Constitutional rights such as the Fifth Amendment privilege against self-incrimination, due process of law and suppression of material evidence favorable to her, in connection with her suspension in the practice of law.

Ramos practised law as a real estate attorney in New York City. She never litigated as an attorney anywhere, not even in the Philippines, where she obtained her law degree. She passed the New York Bar examinations without further law study and was admitted to the New York Bar on February 1978.

CONCLUSION

Petitioner respectfully requests that this Court grants the petition for certiorari to review the issues herein presented.

Queens, New York
December 21, 2002

Respectfully submitted,

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